IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO.543 OF 2002

The Commissioner of Income Tax,
City-III, Mumbai. .. Appellant

v/s.

M/s. Reliance Exports Ltd. .. Respondent

Ms.S.V.Bharucha i/by Mr.K.B.Rao for appellant.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 9th September, 2004

P.C.

Heard.

2. In the memorandum of appal, the following question of law has been proposed:-

> "Whether on the facts and circumstances of the case and in law, the ITAT was right in upholding these decision of CIT(A) directing the AO to allow bill discounting charges of Rs.7,31,704/- as admissible expenditure?"

3. The Tribunal relied upon the assessee's own case for the assessment year 1985-86 and observed thus-

> "2. We have heard both the parties and perused the material placed before us. We find that this issue is covered in favour of the assessee by the decision of ITAT in assessee's own case for asstt. year 1985-86 vide ITA No.3599/Bom/93.

> Respectfully following the same, we sustain the order of CIT(A) and dismiss the revenue's appeal."

4. The learned counsel for the revenue is not in a position to tell us anything further in respect of the order passed for the assessment year 1985-86.

5. In Commissioner of Income Tax, Bombay City II v. Bombay Samachar Ltd., 74 ITR 723, the Division Bench of this court observed thus-

> "As we have already pointed out, it is undisputed that the amounts borrowed from outsiders on which interest has been paid have been used for the purpose of the business of the assessee. It appears to have been the view of the Income-tax Officer that if the assessee had collected the outstanding which were due to it from others, it would have been able to reduce its indebtedness and thus save a part of the interest which it had to pay on its own borrowings. The assessee, therefore, was not justified in allowing its outstandings to remain without charging any interest thereon while it was paying interest on the amounts borrowed by it. To the extent, therefore, to which it would have been in a position to collect interest on the outstandings due to it from others, it could not be permitted to claim interest paid by it to outsiders. In our opinion the view taken by the Income-tax Officer is clearly unsustainable. As has been pointed out by the Madhya Pradesh High Court in Ram Kishan Oil Mills v. Commissioner of Income-tax the only conditions required to be satisfied in order to enable the assessee to claim a deduction in respect of the interest under section 10(2)(iii) are, firstly, that money must have been borrowed by the assessee; secondly, it must have been borrowed for the purpose of business and, thirdly, the assessee must have paid interest on the said amount and claimed it as a deduction. It is not the requirement of the provision that the assessee must further show that the borrowing of the capital was necessary for the business so

that if at the time of borrowing the assessee had sufficient amount of its own, the deduction could not be allowed. Similarly, the Madras High Court in Amna Bai Hajee Issa v. Commissioner of Income-tax has held that in deciding whether a claim for interest on borrowing can be allowed the fact that the assessee had ample resources at its disposal and need not have borrowed, is not a relevant matter for consideration. The matter to be decided is whether the amount of interest was paid in fact in respect of the capital borrowed for business.

The view taken by the Income-tax Officer, therefore, that the assessee could have decreased the extent of its borrowings by collecting its outstandings and, therefore, would not be entitled to claim interest paid by it on borrowed capital is not capable of being sustained. The Appellate Assistant Commissioner's view that the assessee had diverted the capital borrowed by it for making advances to the Bombay Chronicle Pvt.Ltd. or to Messrs. Cama Norton & Co. is clearly wrong on the facts of the case. The ground on which the Appellate Assistant Commissioner has disallowed the claim, therefore, is not capable of being sustained."

6. The Tribunal's view, thus, cannot be faulted.

7. No substantial question of law arises.

Dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)